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30 UNITED STATES DISTRICT COURT
31 NORTHERN DISTRICT OF CALIFORNIA
32 OAKLAND DIVISION

33 INES BURGOS and MONGKOL
34 MAHAVONGTRAKUL, individually and on
35 behalf of other similarly situated individuals,

36 Plaintiffs,

37 vs.

38 SUNVALLEYTEK INTERNATIONAL, INC.,

39 Defendant.

40 Case Number: 4:18-cv-06910-HSG

41 **STIPULATION AND ORDER
42 REQUESTING EXTENSION OF
43 DEADLINE TO CONDUCT FACT
44 DISCOVERY (as modified)**

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1 Pursuant to the Standing Order For Civil Cases Before District Judge Haywood S.
2 Gilliam, Jr., Plaintiffs Ines Burgos and Mongkol Mahavongrakul (“Plaintiffs”) and Defendant
3 Sunvalleytek International, Inc. (“Sunvalleytek” or “Defendant”) (collectively, “the Parties”),
4 hereby jointly submit this statement and request for a two-month extension of the close of fact
5 discovery and all other deadlines.

6 **I. PROCEDURAL HISTORY AND SCHEDULING**

7 The Court entered the Order Setting Case Schedule on February 22, 2019. Dkt. No. 29
8 (“Scheduling Order”). Pursuant to the Scheduling Order, fact discovery closes on December 13,
9 2019. *Id.* The Scheduling Order covers all dates up until the Class Certification Hearing, which is
10 presently scheduled for May 7, 2020 at 2:00 p.m.

11 Since the Court issued the Scheduling Order, the Parties have engaged in diligent and good
12 faith discovery. The Parties nevertheless anticipate that they will require an additional two months
13 to complete fact discovery. In particular, discovery will need to be obtained from Amazon.com,
14 Inc. (“Amazon”) (where the vast majority of Defendant’s sales occur), documents and information
15 are being obtained from entities in China, and the Parties are negotiating and finalizing a stipulation
16 in order to reduce issues to be addressed by the Court and eliminate the need for certain discovery.
17 Although Plaintiff has already taken a deposition, both parties need to take additional depositions
18 and Plaintiff will not be able to take further depositions of Defendant’s personnel until after
19 Defendant completes its forthcoming ESI production and until documents have been received from
20 Amazon, as further discussed below. Therefore, the Parties have agreed to and jointly request that
21 the Court grant a two-month extension of deadlines.

22 **II. GOOD CAUSE EXISTS TO EXTEND THE FACT DISCOVERY DEADLINE**

23 Rule 16 of the Federal Rules of Civil Procedure provides that deadlines established in a case
24 management order may “be modified only for good cause.” “Good cause” exists when a deadline
25 “cannot reasonably be met despite the diligence of the party seeking the extension.” *Johnson v.*
26 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (citation omitted). “Rule 16(b)’s
27 ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Id.*;
28 *see also Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000).

1 Here, good cause exists to amend the current schedule. The Parties have been diligent in
2 pursuing discovery. Both parties have issued interrogatories and requests for production, and both
3 parties produced documents and have worked together to proceed with discovery. The Parties
4 agreed on a protective order and an ESI protocol. The Parties recognized certain challenges with
5 discovery, since many relevant documents relating to the products at issue are located in China
6 and/or are in the hands of third parties, including Amazon. The Parties explored a variety of
7 methods to try to address these challenges. They met and conferred, pursued cooperative production
8 of some documents in the hands of third parties, and utilized other agreed upon other methods to
9 resolve disputes. In order to address certain issues, the Parties negotiated and agreed upon terms of
10 a stipulation that will ultimately narrow the issues to be addressed by the Court and reduce the scope
11 of discovery required, particularly by removing the need for production of a wide range of technical
12 documents located in China, including in the hands of third parties. Defendant is still in the process
13 of compiling and producing cost related documents, some of which require production of
14 documents from entities in China.

15 Electronically stored documents have also posed a number of challenges. Even though the
16 Defendant's custodians of the emails the Parties have agreed would be searched are located in the
17 United States, the administrators for many of those email accounts are located in China. The Parties
18 have agreed upon approximately forty ESI custodians whose files and data will be searched and
19 agreed upon ESI search terms to be applied to those accounts. Defendant has worked with an ESI
20 vendor. The vendor has pulled data from the custodians, and it is working on application of the
21 search terms to the data in order to provide the emails. Due to the volume of emails, the Parties
22 anticipate they will need to work together to potentially modify searches and potentially customize
23 them within certain very voluminous accounts in order to have reasonably reviewable results. The
24 Parties are pursuing that process.

25 The Parties have also encountered a number of challenges in obtaining electronic or
26 otherwise usable copies of the Amazon listings for the numerous products involved in this matter,
27 as well as the consumer reviews, questions, and answers displayed on the Amazon website for
28 Defendant's products. Defendant estimates that well over 95% of its power bank products at issue

1 in this case are sold via Amazon.com. Defendant's ESI vendor thought it could write a script to
2 obtain electronic copies of the landing pages and other information associated with Defendant's
3 power bank products, but the vendor was not able to do so. Several other methods were explored
4 but turned out to be unproductive and/or in violation of Amazon's seller agreements. Defendant
5 ended up producing what it could and then serving a subpoena on Amazon.com to obtain the
6 information that both parties need in order to pursue this case. Defendant is attempting to address
7 the subpoena with Amazon but it is not clear when those records will be received or the format in
8 which they will be provided.

9 Although Plaintiffs have taken a Rule 30(b)(6) deposition in which they explored some
10 areas, Plaintiffs need to receive ESI, specifically including the emails, the information described
11 above from Amazon.com, and all of the remaining cost related information in order to determine
12 the remaining depositions to be taken in this case.

13 Despite the Parties having been diligent, however, it is clear that they will not be able to
14 complete fact discovery by the December 13 deadline and, in turn, will not be able to adequately
15 prepare for expert discovery and class certification briefing without a short extension of those dates.

16 **III. REQUESTED EXTENSION**

17 The Parties respectfully request that the Court extend the following case deadlines as
18 follows:

ACTION/EVENT	CURRENT DATE	REQUESTED DATE
Factual Discovery Deadline:	December 13, 2019	February 13, 2019
Motion for Class Certification Due:	January 17, 2020	March 17, 2020
Initial Expert Disclosures Due:	January 17, 2020	March 17, 2020
Deadline to Depose Plaintiffs' Experts:	January 31, 2020	March 31, 2020
Opposition to Class Certification Due:	March 6, 2020	May 6, 2020
Defendant's Expert Disclosures Due:	March 6, 2020	May 6, 2020
Deadline to Depose Defendant's Experts:	March 20, 2020	May 20, 2020
Class Certification Reply Brief Due:	April 3, 2020	June 3, 2020
Class Certification Hearing:	May 7, 2020 at 2:00 p.m.	July 9, 2020 at 2:00 p.m.

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IT IS SO STIPULATED, through Counsel of Record.

DATED: November 18, 2019

KAPLAN FOX & KILSHEIMER LLP

By: /s/ *Mario M Choi*
Mario M. Choi

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DATED: November 18, 2019

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DATED: November 18, 2019

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1 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

2 I, Mario M. Choi, attest that concurrence in the filing of this document has been obtained
3 from the other signatories. I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct.

5 Executed this 18th day of November 2019, at San Francisco, California.

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7 */s/ Mario M. Choi*
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9 Mario M. Choi

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ORDER

IT IS HEREBY ORDERED that Plaintiffs Ines Burgos and Mongkol Mahavongrakul (“Plaintiffs”) and Defendant Sunvalleytek International, Inc’s. (“Sunvalleytek” or “Defendant”) (collectively, “the Parties”), request for a two-month extension of the close of fact discovery and all other deadlines is GRANTED. Accordingly, the following scheduling dates are amended:

ACTION/EVENT	NEW DATE
Factual Discovery Deadline:	February 13, 2020
Motion for Class Certification Due:	March 17, 2020
Initial Expert Disclosures Due:	March 17, 2020
Deadline to Depose Plaintiffs' Experts:	March 31, 2020
Opposition to Class Certification Due:	May 6, 2020
Defendant's Expert Disclosures Due:	May 6, 2020
Deadline to Depose Defendant's Experts:	May 20, 2020
Class Certification Reply Brief Due:	June 3, 2020
Class Certification Hearing:	July 9, 2020 at 2:00 p.m.

SO ORDERED.

DATED: 11/20/2019

Haywood S. Gilliam, Jr.
Honorable Haywood S. Gilliam, Jr.
United States District Judge